

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH DEPUTY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-183-SLR
)	
STANLEY TAYLOR, THOMAS)	
CARROLL, LARRY MCGUIGAN, and)	
ELIZABETH BURRIS,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Kenneth Deputy has filed a motion for recusal pursuant to 28 U.S.C. § 144 and § 455. (D.I. 5) This is the court's decision on the motion.

I. INTRODUCTION

Plaintiff filed a complaint pursuant 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis. On March 13, 2002, this court granted plaintiff leave to proceed in forma pauperis and ordered him to pay \$10.74 as an initial partial filing fee. (D.I. 1) On March 25, 2002, plaintiff filed his motion for recusal alleging that the court is biased against him and is unable to render a fair and impartial decision. Plaintiff rests his bias claim on two separate points. First, plaintiff alleges that he has filed complaints against the court with the Third Circuit Court of Appeals and, therefore, the court is prejudiced against him. Second, plaintiff alleges that he has

appealed the court's decisions in other matters contending that the court's rulings were motivated by prejudice.

II. DISCUSSION

Plaintiff bases his motion for recusal on both § 144 and § 455. In order to be disqualifying, both § 144 and § 455 require that the alleged bias or prejudice stem from an extrajudicial source. See Liteky v. United States, 510 U.S. 540 (1994). "Extrajudicial source" means a source outside the present or *prior* judicial proceedings. See id. at 555 (emphasis added). The court will address plaintiff's allegations separately under each section.

Section 144 requires that a party seeking recusal file a "timely and *sufficient* affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." See 28 U.S.C. § 144 (emphasis added). "Conclusory allegations need not be accepted as true." Jones v. Pittsburgh Nat. Corp., 899 F.2d 1350, 1356 (3d Cir. 1990) (citing United States v. Vespe, 868 F.2d 1328, 1340 (3d Cir. 1989)). In this case, plaintiff's affidavit is not sufficient to support his claims. Plaintiff merely argues that the court's ruling in his previous case and the fact that plaintiff has filed complaints against the court, based on those rulings, supports his contention that the court is biased under § 144.

Additionally, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. at 555 (citing United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)). The Supreme Court explained that judicial rulings "in and of themselves can only in the rarest circumstances evidence the degree of favoritism or antagonism required" to prove bias. Id. Plaintiff's bare allegation that the court is biased because it ruled against him in a prior suit has no merit and is insufficient to support his claim. Furthermore, plaintiff's contention that his misconduct complaint obligates the court to step down is simply incorrect. He has not cited any rule or decision supporting his contention. If there were such a rule, a disgruntled litigant would be free to "judge shop" by filing a misconduct complaint and disqualifying a judge with whom he disagreed.

Under § 455, "any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455. Section 455 requires a judge to raise the issue of bias sua sponte. "Under this section a judge must consider whether a reasonable person knowing all the circumstances would harbor doubts concerning the judge's impartiality." Jones, 899 F.2d at 1356 (citing United States v. Dalfonso, 707 F.2d 757, 760 (3d Cir. 1983)). Other than his bare allegations, plaintiff has

offered no evidence to support his claim that the court harbors a bias against him. Consequently, the court finds that no reasonable person, knowing all the circumstances, would harbor doubts concerning the court's impartiality.

Plaintiff's allegations are simply based on his disagreement with the court's ruling in his previous lawsuit. Plaintiff has failed to allege sufficient facts to prove that the court has a personal bias or prejudice against him. Furthermore, plaintiff has failed to show that a reasonable person, knowing all the circumstances, would harbor doubts concerning the court's impartiality. Therefore, the court shall deny the motion for recusal.

NOW THEREFORE, THIS 12TH DAY OF APRIL, 2002, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for recusal is DENIED.
2. The clerk of the court shall mail a copy of this Memorandum Order forthwith to Plaintiff

Sue L. Robinson
United States District Judge